

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-13796-DFM
)	
PATRICIA MADDEN CULLEN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 202477,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Patricia Madden Cullen (Respondent) was charged with violating California Rules of Court, rule 9.20, by willfully failing to comply with rule 9.20 as ordered by the Supreme Court. Respondent failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on September 13, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 13, 2012, the State Bar properly filed and served an NDC on Respondent by certified mail, return receipt requested, at her membership records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned to the State Bar by the United States Postal Service.

In addition, reasonable diligence was also used to notify Respondent of this proceeding. The State Bar made numerous attempts to contact Respondent without success. These efforts included sending a courtesy copy of the NDC to Respondent's membership records address; sending an email to the email address listed on her membership records; calling her membership records telephone number; conducting online searches for her using Zabasearch and LexisNexis Smart Linx; calling and leaving messages at possible alternative telephone numbers identified in the online searches; mailing courtesy copies of the NDC to six possible alternative addresses identified in the online searches; calling directory assistance; and contacting Respondent's disciplinary probation deputy.

Respondent failed to file a response to the NDC. On July 26, 2012, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the

State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on August 13, 2012. The order entering the default was served on Respondent at her membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On April 19, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct, however, there is a pending application against Respondent. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on May 22, 2013.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on April 13, 2011, Respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for two years. In this matter, Respondent stipulated to a total of ten counts of misconduct in five matters, including failing to perform legal services with competence (two counts); failing to communicate (three counts); failing to refund unearned fees (three counts) and improper withdrawal (two counts).

Pursuant to a Supreme Court order filed on February 10, 2012, Respondent's disciplinary probation was revoked. The Supreme Court further ordered Respondent suspended for one year, the execution of which was stayed, and she was placed on probation for two years, including a one-year period of suspension. In this matter, Respondent was found culpable of failing to file her first quarterly report and failing to submit proof of her quarterly restitution payment. Respondent did not participate in the probation revocation proceeding.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-N-13796 (The Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of her default, as the State Bar properly served her with the NDC and made various efforts

to locate Respondent, including: calling her membership records telephone number; emailing her membership records email address; sending a copy of the NDC to her membership records address; conducting online searches; calling telephone numbers located through the online searches; sending courtesy copies of the NDC to addresses located through the online searches; calling directory assistance; and contacting Respondent's disciplinary probation deputy;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent Patricia Madden Cullen be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Patricia Madden Cullen, State Bar number 202477, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: August _____, 2013

DONALD F. MILES
Judge of the State Bar Court